

(b) The procedures in § 1953.22 are applicable to the submission of emergency temporary standards. The procedures in § 1953.23 of this subpart apply to submission of supplements for permanent standards as well as to other Federal program changes. When an emergency temporary standard is adopted as a permanent standard the procedure in § 1953.23 is applicable.

§ 1953.22 Emergency temporary standards.

(a)(1) Immediately upon publication of an emergency temporary standard in the FEDERAL REGISTER, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of the standard and the reason why a Federal program change supplement shall be required. The notification shall also provide that the State has 30 days after the effective date of the Federal standard to adopt, under the emergency procedures contained in the plan as required under § 1902.4(a)(1) or (b)(2)(v) of this chapter, a State emergency temporary standard if the State plan covers that issue.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard from the Regional Administrator, the State shall advise the Assistant Regional Director, of the action it will take. The State should advise whether:

(i) It plans to adopt the Federal standard,

(ii) It plans to adopt an “at least as effective as” State standard,

(iii) The State has an existing standard that is at least as effective,

(iv) The Federal standard is not within an issue covered by the State plan, or

(v) The State wants to exclude the issue as defined in 29 CFR 1902.2(c) from the plan, which shall be considered as a request for an advisory opinion under subpart F of this part as to the separability of that issue.

(3) The State shall also include an estimated date of promulgation generally not to exceed 30 days as set out in paragraph (a) of this section. Where the date will exceed 30 days the State shall include a date and the reason why a greater period of time is needed under State law.

(4) The State may also request a finding from the Regional Administrator that there is good cause why the State is not required to adopt the standard on an emergency basis. The request must be supported by relevant data as provided under § 1902.2(c)(2) and (3) of this chapter to show that there is no occupational exposure to the hazard within the State such as to warrant an emergency standard. The provisions in paragraph (b) of this section will be applicable to such a request. The application of this paragraph to emergency temporary standards does not mean that a permanent standard would not be required to be promulgated by the State.

(b)(1) The emergency temporary standard when required under paragraph (a) of this section, shall be submitted to the Regional Administrator within 5 days following its adoption by the State. The Assistant Regional Director shall review the supplement and if examination discloses that the State standard is identical to or at least as effective as the comparable Federal standard, the Regional Administrator shall, within a reasonable time generally not to exceed 20 days, publish a notice to that effect approving the State change.

(2) If examination discloses that the State standard is not at least as effective as the comparable Federal standard, or that the period of time for promulgation which is longer than 30 days is not warranted under paragraph (a)(3) of this section, the Regional Administrator shall immediately notify the State of such findings and of an opportunity to cure such defect or show cause why the State temporary emergency standard should not be rejected. Within a reasonable time, generally not to exceed 20 days from the date of such notification, the Regional Administrator shall cause to be published in the FEDERAL REGISTER a notice approving or rejecting the State standard, whichever is appropriate. Where the State has not taken the opportunity to show cause why the standard should not be rejected, the notice of rejection shall have immediate effect. Where the State has presented arguments and data for approval of the standard and

the question of rejection of the standard is still in issue, a limited public comment period may be provided before decision as to approval or rejection of the standard. The Regional Administrator may, in his discretion hold an informal hearing on rejection of the State emergency standard.

§ 1953.23 Submission and consideration of Federal Program changes.

(a)(1) Within a reasonable time after the occurrence of a Federal program change, other than promulgation of emergency temporary standards, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of a Federal program change which requires a State supplement. This notification shall also contain a date by which States must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed Federal program change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that a state has made a timely and specific showing that good cause exists to extend the time limitation for that State.

(2) Where the Federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the State shall promulgate a State standard adopting such new Federal standard, or more stringent amendment to an existing Federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard or more stringent amendment. The Assistant Secretary may permit a longer time period if the State makes a timely demonstration that good cause exists for extending the time limitation.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) of the Act to administer the plan shall submit the supplement with 6 copies to the Regional Administrator. The supplement shall contain the completed change or a schedule for completion of

the change where necessary. Whenever the State change differs from the Federal program change, the supplement shall contain documentation on how the change maintains the “at least as effective as” status of the plan.

(2) The State may show cause why a supplement should not be required on the grounds that the State program is already the same as or at least as effective as the Federal program change, or that the failure to adopt the Federal program change would not diminish the effectiveness of the State program. The procedures in this section would be applicable thereto.

(3) Where the Federal program change is a permanent standard the State may also advise the Regional Administrator that the State wants to exclude the issue from the plan. Such a submission shall be considered as a request for an advisory opinion under subpart F of this part as to the severability of that issue.

(c) Upon receipt of the Federal program change supplement or schedule submitted by the State, the Regional Administrator shall make a preliminary review of the change. If his examination reveals any defect in the supplement or the schedule, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect either by revising the change or submitting a new or revised schedule for completion of the change. After the preliminary review and after affording the State such opportunity to cure any defects, the Regional Administrator shall submit the Federal program change supplement promptly to the Assistant Secretary, except as provided in § 1953.4 for review and publication of standards supplements.

(d)(1) Upon receipt of the Federal program change supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses that the State change is identical to the Federal program change, the Assistant Secretary shall, within a reasonable time, publish notice to that effect approving the State change. If examination discloses that